

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: '318 PATENT INFRINGEMENT
LITIGATION

)
) Civil Action No. 05-356-KAJ
) (consolidated)
)

**PLAINTIFFS' ANSWERING MEMORANDUM IN
OPPOSITION TO CERTAIN DEFENDANTS' MOTIONS FOR
JUDGMENT ON THE PLEADINGS OR TO BIFURCATE PROCEEDINGS**

On December 13, 2005, Defendant Mylan filed a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure seeking dismissal of Plaintiffs' willfulness allegations, or in the alternative, the bifurcation of willfulness from liability and a stay of discovery on willfulness. (D.I. 57-59). Plaintiffs opposed Mylan's motion on January 9, 2006, arguing that Mylan's motion for dismissal of willfulness is precluded by controlling Federal Circuit case law and that bifurcation is not warranted. (D.I. 76).

Since Mylan filed its motion, the other defendants in these consolidated cases – Alphapharm, Barr, Dr. Reddy's Laboratories, Par, Purepac, and Teva – have joined Mylan's motion. These defendants filed Rule 12(c) motions also seeking dismissal of Plaintiffs' willfulness allegations, or in the alternative, the bifurcation of willfulness from liability and a stay of discovery on willfulness, and they incorporated by reference Mylan's motion, its memorandum of law, and its compendium of unreported cases. (D.I. 66-69, 75, 77). The motions of Alphapharm, Dr. Reddy's Laboratories, Par, Purepac, and Teva state that the issues are "identical" to those raised by Mylan's motion. (D.I. 66-69, 77). Barr similarly stated that the "reasons for disposition raised by Mylan apply equally to Barr Laboratories Inc. and Barr Pharmaceuticals, Inc." (D.I. 75).

Plaintiffs hereby oppose the motions for judgment on the pleadings or to bifurcate proceedings of Alphapharm, Barr, Dr. Reddy's Laboratories, Par, Purepac, and Teva, and hereby incorporate by reference their memorandum in opposition to Mylan's motion. (D.I. 76).

Because these defendants have represented that the issues are "identical," or that the reasons for disposition raised by Mylan "apply equally" to them, plaintiffs' opposition to Mylan's motion also applies with equal force to each of defendants' motions. For the reasons stated in plaintiffs' memorandum in opposition incorporated here by reference, the motions brought by Alphapharm, Barr, Dr. Reddy's Laboratories, Par, Purepac, and Teva should be denied.

ASHBY & GEDDES

/s/ Lauren E. Maguire

Steven J. Balick (I.D. #2114)
John G. Day (I.D. #2403)
Tiffany Geyer Lydon (I.D. #3950)
Lauren E. Maguire (I.D. #4261)
222 Delaware Avenue, 17th Floor
P.O. Box 1150
Wilmington, DE 19899
Tel: 302-654-1888
sbalick@ashby-geddes.com
jday@ashby-geddes.com
tlydon@ashby-geddes.com
lmaguire@ashby-geddes.com

*Attorneys for Janssen Pharmaceutica N.V.,
Janssen L.P., and Synaptech, Inc.*

Of Counsel:

George F. Pappas
Roderick R. McKelvie
Christopher N. Sipes
Jeffrey B. Elikan
Laura H. McNeill
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Tel: 202-662-6000
Fax: 202-662-6291

Steven P. Berman
Office of General Counsel
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
Tel: 732-524-2805
Fax: 732-524-5866

Dated: January 11, 2006
165521.1

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2006, the attached **PLAINTIFFS'**
ANSWERING MEMORANDUM IN OPPOSITION TO CERTAIN DEFENDANTS'
MOTIONS FOR JUDGMENT ON THE PLEADINGS OR TO BIFURCATE
PROCEEDINGS was served upon the below-named counsel of record at the address and in the
manner indicated:

John W. Shaw, Esquire
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801

HAND DELIVERY

Daniel F. Attridge, P.C.
Kirkland & Ellis LLP
655 15th Street, N.W.
Washington, DC 20005-5793

VIA FEDERAL EXPRESS

Mary B. Matterer, Esquire
Morris James Hitchens & Williams LLP
222 Delaware Avenue, 10th Floor
Wilmington, DE 19801

HAND DELIVERY

William A. Rakoczy, Esquire
Rakoczy Molino Mazzochi Siwik LLP
6 West Hubbard Street, Suite 500
Chicago, IL 60601

VIA FEDERAL EXPRESS

Richard L. Horwitz, Esquire
Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899

HAND DELIVERY

Stuart D. Sender, Esquire
Budd Lerner, P.C.
150 John F. Kennedy Parkway
Short Hills, NJ 07078

VIA FEDERAL EXPRESS

John C. Phillips, Jr., Esquire
Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, DE 19806

HAND DELIVERY

Lynn M. Ulrich, Esquire
Winston & Strawn LLP
35 West Wacker Drive
Chicago, IL 60601

VIA FEDERAL EXPRESS

Richard D. Kirk, Esquire
The Bayard Firm
222 Delaware Avenue, Suite 900
Wilmington, DE 19899

HAND DELIVERY

Robert J. Gunther, Jr., Esquire
Latham & Watkins LLP
885 Third Avenue, Suite 1000
New York, NY 10022-4802

VIA FEDERAL EXPRESS

Frederick L. Cottrell, III, Esquire
Richards, Layton & Finger
One Rodney Square
Wilmington, DE 19801

HAND DELIVERY

Alan H. Bernstein, Esquire
Caesar, Rivise, Bernstein, Cohen & Pokotilow, Ltd.
1635 Market Street, 12th Floor
Philadelphia, PA 19103

VIA FEDERAL EXPRESS

Philip A. Rovner, Esquire
Potter Anderson & Corroon LLP
Hercules Plaza
Wilmington, DE 19801

HAND DELIVERY

Barbara S. Wahl, Esquire
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339

VIA FEDERAL EXPRESS

/s/ Lauren E. Maguire

Lauren E. Maguire